

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ROBERTO RIOS,

Petitioner,

v.

Case No. 09-CV-77

TIMOTHY LUNDQUIST,

Respondent.

ORDER

On January 16, 2009, Roberto Rios ("Rios") filed a petition seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Rios, who was convicted in 2005 of attempted first degree intentional homicide in an Eau Claire County Circuit Court, first argued in his habeas petition that his appellate counsel was ineffective in his representation by failing to file the appropriate report to seek an appeal of Rios' conviction. The petitioner also argued that the Eau Claire County Circuit Court deprived him of his right to appeal his conviction. Following a petition by Christopher G. Wren, an Assistant Attorney General with the Wisconsin Department of Justice, the Wisconsin Court of Appeals reinstated Rios' direct appeal rights, allowing the petitioner to seek "post-conviction relief in a criminal case" as provided under WIS. STAT. RULE 809.30. *State v. Rios*, No. 2009XX954-CR (Wis. Ct. App. Aug. 31, 2009). As a consequence, the respondent filed a "Motion to Dismiss the Habeas Corpus Petition as Moot" (Docket #18).

The United States Constitution limits this Court's jurisdiction to live cases and controversies. *Stotts v. Community Unit Sch. Dist. No. 1*, 230 F.3d 989, 990 (7th Cir. 2000) (citing U.S. Const. art. III, § 2). A federal court at “any stage of the proceeding” must dismiss a case as moot when it can no longer “give the petitioner any effective relief.” *A.M. v. Butler*, 360 F.3d 787, 790 (7th Cir. 2004). Here, the Wisconsin Court of Appeals has granted the petitioner the exact relief that he is seeking through the habeas proceeding, an opportunity for a direct appeal in the state court system. As such, the case is moot, and this court lacks subject matter jurisdiction to adjudicate the claim.

Accordingly,

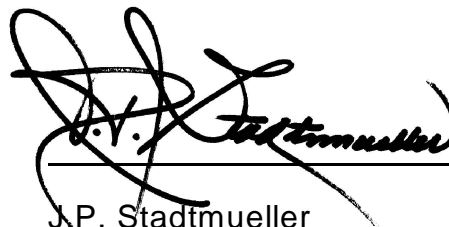
IT IS ORDERED that respondent’s motion to dismiss (Docket #18) be and the same is hereby **GRANTED**;

IT IS FURTHER ORDERED that petitioner’s Petition for Writ of Habeas Corpus (Docket #1) be and the same is hereby **DISMISSED** as moot.

The clerk is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 10th day of September, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J.P. Stadtmueller", is written over a horizontal line.

J.P. Stadtmueller
U.S. District Judge